terms releasing them from their former obligations, were in each case made only between the Government and the 1st defendant, Adnan bin Awang Long. It is obvious that whatever subsequent transactions between the parties were not carried out with the knowledge or consent of the 2nd and 3rd defendants.

I hold that as all the four parties to the 1st contract had not agreed to alter, substitute or rescind it, the defendants are disentitled to the defence under section 62 of the Contracts Act.

There shall be judgment for the plaintiff for $5,400 and costs.

Claim allowed.

Solicitors: *Vohrah & Tan Chee Lan.*

ERICO ESTATES SDN. BHD. & ANOR. v. THE REGISTRAR OF TITLES, KEDAH

[O.C.J. (Syed Agil Barakbah J.) March 31, 1980]

[Alor Star — Originating Motion No. 8 of 1979]

Land Law — Registrar's refusal to accept transfer for registration — Appeal — Whether land "estate land" — Meaning of "contiguous" — National Land Code, s. 214A(11).

Interpretation — Construction of statute — Object of Act, subject matters and surrounding circumstances.

This is an appeal against the respondent's decision in rejecting the Instrument of Transfer of agricultural land situate in Kedah made between the first and the second appellants. The respondent had rejected the said transfer on the ground that the said land is "estate land" as defined under section 214A of the National Land Code and as such the approval of the Estate Land Board for the transfer was necessary.

The main question in the appeal is whether the said land was "estate land".

Held, allowing the appeal: (1) in construing an Act of Parliament one must look at the object of the Act, the subject matter of the section, the surrounding circumstances of the case and construe the words as a whole;

(2) the object of section 214A of the National Land Code is to prevent fragmentation of estate land;

(3) the word "contiguous" in section 214A(11) ought to be construed in line with the intention of Parliament, i.e. in its ordinary and strict meaning of "touching" and not "neighbouring";

(4) in the circumstances, the Registrar had made a wrong decision. The land in question was not estate land and the appellant need not obtain prior approval of the Board.

Cases referred to:-

(1) *Spillers Ltd.* v. *Cardiff (Borough) Assessment Committee; Pierce* v. *Wirral Assessment Committee etc.* [1931] 2 K.B. 21.

(2) *Haynes* v. *King* [1893] 3 Ch. 439 @ 448.

ORIGINATING MOTION.

A. Jayadeva for the appellants.

Abu Bakar bin Awang (Legal Adviser) for the respondent.

Syed Agil Barakbah J.: This is an appeal against the decision of the Registrar of Titles Negeri Kedah dated February 27, 1979 rejecting the Instrument of Transfer of agricultural land comprised in Surat Putus Besar No. 61859 Portion No. 282 situate in the Mukim of Padang China, in the District of Kulim, Kedah containing an area of 124 relongs 70 jembas 00 sq. ft. (88 acres 1 rood 05 poles) made between the First and the Second Appellants.

Pursuant to an agreement of sale the first appellant executed the said instrument in Form 14A of the National Land Code (hereinafter called "the Code") dated January 4, 1979 in respect of the said land, had it duly stamped and presented it to the Registrar for registration. The latter however rejected the said transfer on the ground that the said land is "estate land" as defined under section 214A of the Code and as such the approval of the Estate Land Board, for the transfer is necessary.

The main question in this appeal is whether the said land is "estate land".

The section states:—

"214A. (1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed off in any manner whatsoever, to two or more persons unless approval of such transfer, conveyance or disposal has first been obtained from the Estate Land Board (hereinafter referred to as the 'Board') established under subsection (3).

(2) The Registrar shall not register any instrument of transfer of such land under Part Eighteen of this Act unless such instrument is accompanied by a certificate of approval granted by the Board."

The other subsections deal with the establishment of the Board, the power of the Board to approve or refuse an application, to call any person to give a statement or produce any document before making a decision and the power of the State Authority to confirm or reverse the decision of the Board on appeal.

Subsection (11) provides:

"For the purpose of this section 'estate land' means any agricultural land held under one or more than one title, the area or the aggregate area of which is not less than 500 acres and the lots constituting such area are contiguous."

Under subsection (11) above, in order to be classified as "estate land", the following ingredients are necessary:—

(1) the land must be agricultural land;

(2) it must be held under one or more than one title;

(3) the area or the aggregate area of such land must not be les than 500 acres; and

(4) the lots constituting such area are contiguous.

From the affidavit of Chang Tiong How, the managing director of the first appellant, the company is the registered owner of five separate lots of agricultural lands in the same locality in five separate titles comprising 1,038 acres or thereabout. Among them are lot No. 282, the land in dispute, and Lot No. 279, which is 827 acres in area. Both are separated by state land forming the main road Kelang Bahru/ Bagan Sena, Kulim, Kedah. The other three lots are separated by other alienated lands belonging to other registered proprietors.

The first three ingredients of subsection (11) are fulfilled.

The remaining question therefore touches the fourth limb i.e. whether the two lots 282 & 279 are contiguous. The National Land Code does not define the word "contiguous" but under section 146 which

deals with amalgamation of lands, subsection (3) thereof states:

"(3) For the purposes of subsection (1), any two or more lots shall be taken to be contiguous if each of them shares one boundary at least in common with another of them...."

Subsection (1) allows the registered owner of two or more contiguous lots of alienated land vested in separate titles to amalgamate them into one single title, subject to the approval of the State Commissioner or Collector and subject to the proviso stated thereunder. The lots must be held under Land Office Title and their combined area will not exceed ten acres. It is clear that the requirement of at least one common boundary for the two lots at subsection (3) above bears the same ordinary meaning of the word "contiguous" found in the *Shorter Oxford English Dictionary* which gives the meaning as "touching, in contact, adjoining". However under section 2 of the Kedah Land Enactment No. 56 and the F.M.S. Land Code Chapter 138 "contiguous lots" mean such lots as are not separated from each other by State or reserved land or by alienated land held by another proprietor, and includes lots separated from each other only by such State Land or reserved lands as is required for roads, railways or waterways.

The first limb of the definition implies the state of the lands being in contact or touching one another and therefore consonant with the ordinary meaning of contiguous. The second limb, however, renders the lands being still contiguous even though they are separated by state or reserved lands which are required for public purposes as stated therein. Be that as it may, the two statutes have since been repealed by the National Land Code *vide* section 438 subsection (1) and the Eleventh Schedule with effect from the commencement of the Act.

It is clear the present Code has left out the old definition and in particular the second limb which is in conflict with the present definition at section 146(3) of the Code and with the ordinary meaning as stated earlier. I do not think that the position can be saved by section 4 of the Code or by any other written laws. In the circumstances it is clear therefore that Parliament does not intend to retain the second limb of the old definition in the present Code.

The question is what construction ought to be given to the clause "and the lots constituting such area are contiguous" appearing at the 4th limb of subsection (11) of section 214A of the Code.

In *Spillers Ltd.* v. *Cardiff (Borough) Assessment Committee, Pierce* v. *Wirral Assessment Committee etc.*[1] it was held that the word "contiguous" must be construed in its ordinary and proper sense as meaning "touching", and not in its loose sense as meaning "neighbouring".

In the five special cases stated certain properties in the same occupation as the main industrial hereditaments were alleged to be part of the main industrial hereditament as being contiguous thereto under section 3(3) of the Rating and Valuation (Apportionment) Act, 1928. In one case the properties were separated by a public thoroughfare and in the other four cases the properties were separated by other properties in different ownership. On page 43 Lord Hewart said:—

"It ought to be the rule and we are glad to think it is the rule, that the words are used in an Act of Parliament correctly and exactly, and not loosely and inexactly. Upon those who assert that the rule has been broken the burden of establishing their position lies heavily. And they can discharge it by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred.

This indeed, must not be merely the legal, but also the literary canon of interpretation. No person of education or intelligence would understand or suspect, that a writer or speaker was using the word 'contiguous' in a loose sense of 'neighbouring' unless there was something in the context that compelled that conclusion. If a man spoke or wrote of 'contiguous islands' he must necessarily mean 'neighbouring' because one island must be separated by water from another. But if he spoke of 'contiguous houses' it would be difficult to suppose that he meant anything but houses touching each other. The legal canon is the same...."

A distinction should be drawn in the case of lease of demised premises. If there is a demise of one house in a street, and a covenant by the lessor as to "contiguous" houses, and if there be evidence that at the date of the lease all the houses in the street existed as detached and separate buildings, then the word "contiguous" may be rightly construed as meaning "next adjacent", or "contiguous houses" as "houses on contiguous plots". (*per* Lord Hewart, *supra*, page 43).

That was so held in *Haynes* v. *King*.[2] North J. in construing the phrase "any premises adjoining or contiguous to the hereditaments hereby demised, concluded that the word "contiguous" has been wrongly inserted and not intended to have its strict meaning of "touching", on the ground that the phrase "such adjoining or contiguous premises" were meant to be alternative and not intended to be synonymous.

In construing an Act of Parliament the court must look at the object of the Act, the subject matter of the section, the surrounding circumstances of the case and construe the words as a whole. The object of section 214A of the National Land Code is to prevent fragmentation of estate land and Parliament has introduced certain conditions and restrictions as embodied in the section so that any application for the transfer of estate land, requires more stringent enquiry than in cases of ordinary transfer. Hence the four conditions as stated earlier which are required in order to render the land an estate land. The Code has done away with the old definition of contiguous lots. Only the solitary word "contiguous" appears by itself at subsection (11) of section 214A. For the reasons that I have dealt with earlier and in line with the canon of construction I am of the opinion that the clause by subsection (11) ought to be construed in line with the intention of Parliament, i.e. in its ordinary and strict meaning of "touching" and not "neighbouring". It is conceded in the present appeal that the main road runs through state land whose boundaries on either side are clearly seen in the plan filed together with the affidavit. The two relevant lots are therefore separated by state land and are not contiguous with each other. In the circumstances I hold that the Registrar has made a wrong decision. The appeal is allowed with costs. The appellant need not obtain the prior approval of the Board for the transfer of lot No. 282 under section 214A of the Code as the land is not estate land.

Appeal allowed.

Solicitors: *Jeyadeva & Kamal.*